





# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

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DA 02-2082

Released: August 26, 2002

**MEDIA BUREAU ANNOUNCES PERMIT-BUT-DISCLOSE EX PARTE STATUS FOR  
TRANSFER OF CONTROL APPLICATIONS FILED BY HISPANIC BROADCASTING  
CORPORATION AND UNIVISION COMMUNICATIONS, INC.**

**MB DOCKET NO. 02-235**

On July 23, 2002, Hispanic Broadcasting Corporation (Hispanic Broadcasting) and Univision Communications, Inc. (Univision) filed applications seeking Commission consent to the transfer of control of Hispanic Broadcasting's licenses and authorizations to Univision. Hispanic Broadcasting and its subsidiaries currently own 57 full-service AM and FM Spanish language broadcast radio stations, while Univision and its subsidiaries currently own 32 full-service broadcast television stations. On August 2, 2002, the Media Bureau issued a Broadcast Actions Public Notice (*Broadcast Applications*, Report No. 25290) announcing that the applications had been accepted for filing and establishing a pleading cycle to permit interested parties an opportunity to comment on the proposed transaction. The petition-to-deny period for these applications ends at close of business on September 3, 2002. 47 C.F.R. §73.3584(a).

Applications for consent to the transfer of control of broadcast licenses and authorizations are subject, unless otherwise provided, to treatment by the Commission as restricted proceedings for ex parte purposes under Section 1.1208 of the Commission's rules. 47 C.F.R. §1.1208. We have concluded, however, that classifying this proceeding as permit-but-disclose would, in this case, serve the public interest. Accordingly, by this Public Notice, and pursuant to Section 1.1200(a) of the Commission's rules, 47 C.F.R. §1.1200(a), we announce that the ex parte procedures applicable to nonrestricted proceedings will govern our consideration of the instant applications. See 47 C.F.R. §1.1206.

Permit-but-disclose ex parte procedures permit interested parties to make ex parte presentations to the Commissioners and Commission employees and require that these presentations be disclosed in the record of the relevant proceeding. Persons making a written ex parte presentation to the Commissioners or Commission employees must file the written presentation with the Commission Secretary no later than the next business day after the presentation. 47 C.F.R. §1.1206(b)(1). Persons making oral ex parte presentations must file a summary of the presentation no later than the next business day after the presentation. 47 C.F.R. §1.1206(b)(2).

All ex parte filings must be clearly labeled as such and must reference this Public Notice, DA 02-2082, as well as the proceeding's docket number, MB Docket No. 02-235.

An original and one copy of all ex parte memoranda must be filed with the Commission's Secretary, Marlene H. Dortch, 445 12<sup>th</sup> Street, S.W., TW-A325, Washington, D.C. 20554, in accordance with Section 1.1206(b)(1) of the Commission's rules. 47 C.F.R. §1.1206(b)(1). In addition, one copy of each ex parte memoranda should be delivered to Qualex International, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554; and David Brown, Media Bureau, 445 12<sup>th</sup> Street, S.W., Room 2-C316, Washington, D.C. 20554.

Individuals can access copies of the application and related documents online through the Commission's Electronic Comment Filing System, or through links contained in the web page maintained by the Office of General Counsel's Transaction Team. Hard copies of the applications and documents are also available for public inspection and copying during normal business hours in the Commission's Reference Information Center located at Room CY-A257, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.

For further information, contact David Brown, Media Bureau, at (202) 418-2600.  
TTY: (202) 418-7172.

By: Chief, Media Bureau

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Federal Communications Commission  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of the Applications of )  
)  
Shareholders of Hispanic Broadcasting Corp. ) Docket No. MB 02-235  
(Transferor) )  
)  
and )  
) File Nos.:  
Univision Communications, Inc. ) BTC/BTCH-20020723ABL-ACC  
(Transferee) ) BTCH-20020723ACD-ACT  
) BTCFTB-20020723ACU  
For Consent to the Transfer of Control of Tichenor ) BTCH-20020723ACV  
Licensee Corporation, HBC License Corporation ) BTCH-20020723ACW  
HBC Houston License Corporation, WLXX-AM ) BTC-20020723ACX  
License Corporation, TMS License California, ) BTCH-20020723ACY-ACZ  
Inc., WADO-AM License Corporation, KTNQ-AM ) BTCFTB-20020723ADA-ADB  
License Corporation, KLVE-FM License ) BTC/BTCH-20020723ADC-ADD  
Corporation, WQBA-AM License Corporation, ) BTC/BTCH-20020723ADE-ADH  
WQBA-FM License Corporation, KECS-FM ) BTCH-20020723ADK-ADP  
License Corporation, KMRT-AM License ) BTC-20020723ADQ  
Corporation, KESS-AM License Corporation, ) BTCH-20020723ADR  
KICI-FM License Corporation, KHCK-FM )  
License Corporation, KCYT-FM License )  
Corporation, KLSQ-AM License Corporation, )  
and HBC Investments, Inc. )

To: The Commission

PETITION TO DENY

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September 3, 2002

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## SUMMARY

The applications for consent to transfer of control are sham applications, structured to comply, on paper, with the FCC's multiple ownership rules.<sup>1</sup> The applications, as structured, do not comport in reality with how the merged entity will be managed and operated.

While Clear Channel Communications, Inc. ("Clear Channel") holds an ostensibly non-attributable interest in Hispanic Broadcasting Corp. ("HBC"), the evidence shows that it has exercised significant influence and control over the affairs of HBC. Univision Communications Inc. ("Univision") likewise has the right to exercise significant control over Entravision Communications Corporation ("Entravision"). Univision holds a 32% equity interest in Entravision, which gives it a broad spectrum of rights, including the right to elect members to Entravision's board of directors. More importantly, Entravision and Univision are partners who actively cooperate in sales and marketing of the Univision Networks. Entravision is Univision's largest affiliate group. Entravision's stated business plan is to acquire more television stations affiliated with Univision and to purchase radio stations in markets where it already has a Univision affiliation. Univision has been, and by necessity must continue to be, actively involved in Entravision's day-to-day business affairs. Univision's claim that its interest in Entravision will be converted into a non-attributable, passive interest cannot be credited.

The transfer application seen for what it is, i.e. a proposed merger between Clear Channel/HBC, on the one hand, and Univision/Entravision on the other, would create an entity with an unreliable and therefore, attributable ownership structure. If this merger is

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<sup>1</sup> 47 C.F.R. § 73.3555.

approved the merged entity will control radio stations far in excess of what is permitted by the FCC's rules. For example, in Los Angeles, Clear Channel, HBC, Univision and Entravision together own or operate 16 radio stations, 4 AM and 12 FM. The Commission should find that the combined ownership interests are attributable and deny the applications for consent to transfer of control to Univision.

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Before the  
**Federal Communications Commission**  
Washington, DC 20554

In the Matter of the Applications of	)
	)
Shareholders of Hispanic Broadcasting Corp.	) Docket No. MB 02-235
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License Corporation, TMS License California,	) BTCH-20020723ACY-ACZ
Inc., WADO-AM License Corporation, KTNQ-AM	) BTCFTB-20020723ADA-ADB
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WQBA-FM License Corporation, KECS-FM	) BTCH-20020723ADK-ADP
License Corporation, KMRT-AM License	) BTC-20020723ADQ
Corporation, KESS-AM License Corporation,	) BTCH-20020723ADR
KICI-FM License Corporation, KHCK-FM	)
License Corporation, KCYT-FM License	)
Corporation, KLSQ-AM License Corporation,	)
and HBC Investments, Inc.	)

To: The Commission

**PETITION TO DENY**

National Hispanic Policy NHPI, Incorporated ("NHPI"), by its attorneys, hereby submits its petition to deny the above-referenced applications for consent to transfer control from the shareholders of Hispanic Broadcasting Corp. ("HBC") to Univision Communications, Inc. ("Univision"). In support thereof, NHPI, states as follows:

## I. STANDING

NHPI has standing to file this formal petition to deny under 47 C.F.R. §309(d) of the Communications Act of 1934, as amended. Unless organizations like NHPI can be heard by the Commission, there may be no adequate way to bring to the Commission's attention matters impacting on the qualifications of a licensee to assign or transfer broadcast facilities. *See, Office of Communications for the United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966). The Commission will accord party-in-interest status to a petitioner who demonstrates either residence in the station's service area, or who shows that he or she listens to the station regularly, and that such listening or viewing is not the result of transient contacts with the station. *See, Chet-5 Broadcasting, L.P.*, 14 FCC Rcd 13041 (1999). NHPI addresses issues that relate to the Hispanic American population and seeks to advance the interests of that population. Moreover, Senator Efrain Gonzales, President of NHPI, resides within the service area of WADO(AM). Thus, there is standing to file the instant petition to deny.<sup>1</sup>

## II. THE PROPOSED MERGER BETWEEN UNIVISION AND HBC IS A SHAM DESIGNED TO CIRCUMVENT THE FCC'S ATTRIBUTION RULES

Pursuant to an Agreement and Plan of Reorganization, dated June 11, 2002, HBC and Univision propose to merge HBC into Univision Acquisition Corporation with HBC continuing as the surviving corporation of such merger and as a direct wholly owned subsidiary of Univision (referred to herein as "New Univision"). New Univision attempts to portray a corporate structure that complies with the FCC's multiple ownership

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<sup>1</sup> See Declaration of Efrain Gonzales, Exhibit I hereto.

rules.<sup>2</sup> However, the applications for transfer of control do not accurately depict how New Univision will be managed; nor does it accurately specify the parties that will have significant influence and control over the affairs of New Univision. Only by reference to all the facts and circumstances surrounding the proposed transaction, can the true nature of the contemplated transfer be ascertained.

Clear Channel Communications, Inc. ("Clear Channel") holds a 26% non-voting interest in HBC. As discussed below, while Clear Channel's interest is non-voting, Clear Channel nonetheless actively manages the affairs of HBC.

Univision holds a 32% equity interest in Entravision Communications Corporation ("Entravision").<sup>3</sup> Entravision owns and/or operates 38 television stations and 54 radio stations. Univision proposes to convert its voting shares in Entravision into non-voting shares, thus making its interest in Entravision non-attributable. However, substantial questions exist regarding the parties' compliance with the Commission's equity-debt plus rule as well as with the affiliation relationship between them.

Based on past conduct, the Commission cannot reasonably expect Clear Channel to maintain a control level in New Univision commensurate with its purported ownership interest. Further, the Commission cannot reasonably expect Univision to cease its active involvement in the business affairs of Entravision, its leading affiliate and business partner. With a track record that belies the paper promises offered in the application, it is apparent that New Univision's organizational structure is an unreliable sham which should be the subject of an evidentiary hearing.

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<sup>2</sup> 47 C.F.R. § 73.3555.

<sup>3</sup> See, Univision, Securities and Exchange Commission Form 10-K for year ended December 31, 2001.

The Commission has applied the term "sham" to an application in situations where an applicant's organizational structure has been found to be unreliable.<sup>4</sup> The applications for transfer of control present a corporate structure, which only specifically complies with the Commission's attribution rules. In reality that structure is not an accurate depiction of how the licensee's affairs will be managed. But for New Univision's structured voting rights, Clear Channel, Univision, HBC and Entravision combined would hold attributable interests in multiple markets well in excess of what is permitted by Section 73.3555 of the Commission's Rules. Clear Channel actively participates in the affairs of HBC. Univision, likewise, is actively involved in the business and operations of its largest affiliate, Entravision. Based on past practice, the Commission should conclude that, regardless of proposed ownership structure, Clear Channel will exercise significant influence over New Univision and that Univision will continue its traditionally dominate relationship with Entravision.

**A. The Parties to the Merger**

**1. Univision**

Univision is the leading Spanish-language media company in the United States.<sup>5</sup> The company's operations include Univision Network, Univision Television Group, Galavision, Univision Music Group and Univision Online. Univision's television network is the leading Spanish-language television network in the U.S. reaching more than 97% of all Hispanic households.<sup>6</sup> It is the most-watched television network (English

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<sup>4</sup> See e.g., *Evansville Skywave, Inc.*, 7 FCC Rcd 1699, 1700 (1992) citing *Revision of Application for Construction Permit*, 4 FCC Rcd 3853, 3856 (1989).

<sup>5</sup> See, Univision, Securities and Exchange Commission Form 10-K for year ended December 31, 2001, at p.1.

<sup>6</sup> *Id.* at p.5.

or Spanish) among U.S. Hispanic households and had a 79% average share in prime time of the U.S. Spanish-language network television audience in the 2000-2001 season.<sup>7</sup>

Univision also reaches the U.S. Hispanic population through Galavision, the country's leading Spanish-language cable television network, Univision Music Group, and Univision online portal, Univision.com, the premier Spanish-language website in the United States. In January 2002, Univision launched a second television network, Telefutura. Telefutura's programming, which includes sports, movies and novellas, targets younger U.S. Hispanics. The company programs its three networks so that Galavision, Univision Network, and Telefutura Network generally will not run the same program simultaneously.

## **2. Entravision**

Entravision is a diversified Spanish-language media company with a unique portfolio of television, radio, outdoor advertising and publishing assets.<sup>8</sup> Entravision owns and/or operates Univision affiliated television stations serving 21 of the top 50 Hispanic markets in the U.S.

Entravision owns and/or operates 54 radio stations in 25 markets, 52 of which are located in the top 50 Hispanic markets in the U.S.<sup>9</sup> The company also operates the nation's largest centrally programmed Spanish-language radio network with 47 radio station affiliates in addition to the company's owned and operated stations. Entravision

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<sup>7</sup> *Id.*

<sup>8</sup> See, Entravision Security and Exchange Commission Form 10K, filed March 3, 2002, pertinent portions of which are attached hereto as Exhibit 2.

<sup>9</sup> *Id.* p. 1.

views its primary competitors to be HBC, Spanish Broadcasting System, Inc. and Unica Communications Corp.<sup>10</sup>

Entravision also owns and operates 11,200 outdoor advertising faces located primarily in high density Hispanic communities in Los Angeles and New York.<sup>11</sup>

Entravision competes with other outdoor advertisers, including Clear Channel.<sup>12</sup>

In its 2001 Annual Report, Letter to Shareholders,<sup>13</sup> Entravision sets forth the key elements of its business plan:

Television will continue to be our core business. We plan to continue to grow our Univision and Telefutura audience bases by acquiring stations in cities with significant Hispanic populations that are not currently served by Univision or Entravision. In radio, we are focusing on additional acquisitions in the top-20 U.S. Hispanic markets and in markets where we already own Univision-affiliated television stations.

### 3. Clear Channel

Clear Channel is a diversified media company with three business segments: broadcasting, outdoor advertising, and live entertainment.<sup>14</sup> In the year 2001, the company reported Gross Revenues of 7.9 billion dollars.<sup>15</sup> As of December 31, 2001, Clear Channel owned, programmed, or sold time for 1,165 domestic radio stations.<sup>16</sup>

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<sup>10</sup> *Id.* p. 12.

<sup>11</sup> *Id.* p. 12.

<sup>12</sup> *Id.* p. 15.

<sup>13</sup> Attached hereto as Exhibit 3.

<sup>14</sup> Clear Channel, Securities and Exchange Commission Form 10-K for year ended December 31, 2001, p.3.

<sup>15</sup> *Id.* at p. 33.

<sup>16</sup> *Id.* at p. 3.

Clear Channel also owns one of the leading national radio networks, Premier Radio Networks, with a total audience of over 180 million weekly listeners.<sup>17</sup> The network syndicates talk programming including such talent as Rush Limbaugh, Dr. Laura Schlessinger, Jim Rome, and music programming including such talent as Rick Dees and Casey Kasem.<sup>18</sup>

Clear Channel is also one of the world's largest domestic outdoor advertising companies based on inventory of 730,039 advertising display faces.<sup>19</sup> In addition, Clear Channel is one of the world's largest diversified promoters, producers, and venue operators for live entertainment events. During 2001 Clear Channel promoted or produced over 26,000 events including music concerts, theatrical shows and specialized sports events.<sup>20</sup> Clear Channel reached 66 million people through all of these activities during 2001.<sup>21</sup> As of December 31, 2001, Clear Channel owned, programmed or sold airtime for 19 television stations.<sup>22</sup> With the recently completed merger with Ackerly Group, Inc., Clear Channel now operates 36 television stations in 27 markets. Clear Channel also owns Katz Media Group, a full-service media representation firm that sells national spot advertising time for clients in the radio and television industries.<sup>23</sup>

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<sup>17</sup> *Id.* at p. 4.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at p. 3.

<sup>20</sup> *Id.* at p.5.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at p. 5.

<sup>23</sup> *Id.* at p. 7.

#### 4. HBC

HBC is the largest Spanish-language radio broadcasting company, as measured in gross revenues, and the 9<sup>th</sup> largest radio broadcaster in the United States.<sup>24</sup> As of December 31, 2001 the company owned 52 radio stations in 13 markets. HBC stations are located in 12 of the 15 largest Hispanic markets in the United States, including Los Angeles, New York, Miami, San Francisco/San Jose, Chicago, Houston, San Antonio, Dallas, McAllen/Brownsville, San Diego, Phoenix and El Paso.<sup>25</sup> In addition, HBC operates HBC Radio Network, which is one of the largest Spanish-language radio broadcast networks in the United States in terms of audience delivery, and HBCi which operates the Company's radio station Internet websites and a network of Hispanic community-focused bilingual websites at [www.netmio.com](http://www.netmio.com).<sup>26</sup> HBC is also the exclusive provider of Spanish-language programming for the XM Satellite Radio Network.

##### **B. Clear Channel Exerts Significant Influence Over the Affairs of HBC.**

Clear Channel is HBC's largest shareholder. Clear Channel owns all the outstanding shares of HBC's Class B common stock, which accounts for 26 % of HBC's common stock. Class B shares are non-voting, yet Clear Channel's prior approval is required before HBC can take several actions:

- The sale or transfer of all or substantially all of HBC's assets or the merger with another entity;
- The issuance of shares of preferred stock;

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<sup>24</sup> HBC, Securities and Exchange Commission Form 10-K for year ended December 31, 2001 p.3.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*



- An amendment of the certificate of incorporation if it would adversely affect the rights of Class B shareholders;
- The declaration or payment of non-cash dividends or distributions; and
- Any amendment to the articles of incorporation concerning the corporation's capital stock.<sup>27</sup>

When Clear Channel sought to merge with AMFM, Inc., a petitioner, National Hispanic Policy NHPI, Incorporated ("NHPI"), argued that Clear Channel's ownership of Class B shares, with their associated right to veto certain transactions, gives Clear Channel the power to influence and control the affairs of HBC. Therefore, NHPI argued, Clear Channel's interest in HBC is attributable and consequently in violation of the Commission's multiple ownership rules. In its Petition to Deny, NHPI argued that the Clear Channel/HBC relationship was structured in such a way so as to avoid the FCC's multiple ownership rules. In other words, NHPI argued that the Clear Channel/HBC structure was an unreliable sham and therefore could not be credited as non-attributable.

The Commission denied NHPI's petition stating in pertinent part:

We find that NHPI has failed to provide sufficient evidence to raise a substantial and material question of fact as to whether Clear Channel controls or influences HBC's operations of its radio stations. Simply put, the specific corporate matters requiring Clear Channel's prior consent do not rise to the level of *de facto* control. The Commission has previously held that such "fundamental matters" are permissible investor protections that neither restrict a corporation's discretion or rise to the level of attributable influence. Clear Channel does not possess any participatory rights in HBC or its broadcast holdings.<sup>28</sup>

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<sup>27</sup> *Id.* at p. 14.

<sup>28</sup> *Shareholders of AMFM*, 15 FCC Rcd 16062, 16078 (2000) footnotes omitted, emphasis added.

While Clear Channel may not "legally" possess any participatory rights in HBC, more recent evidence shows that Clear Channel has nonetheless actively participated in the affairs of HBC. On June 12, 2002 Spanish Broadcasting System, Inc. ("SBS") filed a lawsuit against Clear Channel and HBC in United States District Court Southern District of Florida, Miami Division.<sup>29</sup> As SBS's suit demonstrates, Clear Channel has actively participated in the management and operational affairs of HBC. Clear Channel's conduct, therefore, is clearly active and its interest in HBC is attributable.<sup>30</sup> Clear Channel's participation in the affairs of HBC demonstrates a pattern of conduct in which Clear Channel conceals, through numerous material misrepresentations to the FCC, the actual ownership and control of certain radio station groups, including HBC.<sup>31</sup> This is particularly significant in light of the Commission's prior approval of Clear Channel's relationship to HBC, as shown *supra*. The Commission has unwittingly allowed Clear Channel to evade the ownership rules in the past and to exert significant veto power over HBO corporate actions. It should not permit such violative behavior in the future for Clear Channel has targeted Univision for the same kind of control. Moreover, HBC did not, itself, choose Univision as a merger partner. Rather, the negative covenants included in documents previously presented to the Commission provided Clear Channel with the

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<sup>29</sup> A copy of the Amended Complaint is attached hereto as Exhibit 4.

<sup>30</sup> See, *In the Matter of Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd. 12559, 12568-69 (1999).

<sup>31</sup> Clear Channel secretly controls several companies that are radio station licensees. These Clear Channel front companies own radio stations in markets where Clear Channel, either because of the Commission's multiple ownership rules or restrictions set by the Department of Justice, cannot own additional radio stations. See Petition to Deny filed November 8, 2001 by David Ringer against the assignment of license of WFCB (formerly WKKJ) Chillicothe, Ohio from Secret Communications II, Inc. to Clear Channel. ("Ringer Petition") See also, Petition to Deny filed on January 2, 2002 by M&M Broadcasters, Ltd. against the assignment of license of KBRQ, Waco Texas from Chase Radio to Clear Channel. ("M&M Petition") The Petitions to Deny and the associated pleadings are incorporated herein by reference.

power to control the decision. Moreover, in the former merger, the Commission specifically held that there had been no showing that there would be future anti-competitive business practices based on Clear Channel's control of AMFM.<sup>32</sup>

The facts set forth in the SBS lawsuit demonstrate a pattern of active participation in the affairs of HBC on the part of Clear Channel and its principals. For example, L. Lowry Mays, Clear Channel's Chairman and Chief Executive Officer negotiated on behalf of HBC to purchase SBS's radio stations. Randall Mays, Clear Channel's Executive Vice President and Chief Financial Officer, met with Jason Shrinsky, SBS's communications counsel, to discuss Clear Channel's "continuing interest in acquiring SBS for HBC."<sup>33</sup> As the complaint states:

Mays suggested to Shrinsky at that meeting that HBC wanted to buy SBS at a considerably lower price than that previously discussed. After Shrinsky told Mays that such a proposal was not a basis for discussion, Mays told Shrinsky that if SBS did not accept CC's [Clear Channel's] offer CC "will ultimately buy SBS on the bankruptcy court steps."<sup>34</sup>

The Complaint sets forth the various actions Clear Channel and its principals took on behalf of HBC to make good on Mays's threat. For example, in an effort to undermine SBS's initial public offering ("IPO"), Randall Mays called Lehman Brothers to tell them not to go ahead with the IPO. Mr. Mays further told Lehman Brothers that SBS's Chairman and Chief Executive Officer was "a drug user and/or trafficker."<sup>35</sup> Randall

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<sup>32</sup> *Shareholders of AMFM*, 15 FCC Rcd at 16078.

<sup>33</sup> Exhibit 4, Complaint at para. 19.

<sup>34</sup> *Id.*

<sup>35</sup> Complaint at para. 21. Clear Channel understands the dangers and unacceptable nature of illegal drug use, as this statement implies. Why then is Clear Channel using its radio stations to promote drug use, particularly among the young? See, Complaint of Douglas Vanderlaan filed April 3, 2002 with the FCC's

Mays also called the investment-banking firm of B T Alex Brown ("BTAB") to say that if it participated in the SBS IPO, it would endanger the \$30 million in annual fees it received from Clear Channel and HBC.<sup>36</sup> When Clear Channel was unable to stop the IPO, the Complaint goes on to detail the steps Clear Channel principals took to depress SBS's stock price. The Complaint shows that Clear Channel principals actively participated in a scheme to induce institutional investors to sell their holdings in SBS stock.

Below are some additional examples of Clear Channel's active participation in the management and operation of HBC, as outlined in SBS's Complaint:

Other occasions on which CC has exercised control over HBC include the negotiations of the purchase of El Dorado Broadcasting in Texas, the purchase of WNWK-FM in Newark, the negotiation of national representative agreements for HBC stations (including the inducement of Katz Hispanic Media to terminate its contract with SBS), discussions with SBS concerning whether SBS would be allowed to bid on stations that CC was required to spin off in order to acquire AMFM, the movement of CC personnel (including General Managers) to HBC stations and the ongoing discussions between CC and Univision (the largest Spanish-language television broadcaster in the United States) which resulted in the merger agreement of Univision and HBC announced on June 12, 2002.<sup>37</sup>

The issues raised in the SBS lawsuit represent only the tip of the iceberg concerning Clear Channel's control over the management of HBC. Available evidence supports SBS's contention that Clear Channel has misrepresented its true control over,

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Enforcement Bureau. Mr. Vanderlaan's Complaint and associated pleading are incorporated herein by reference.

<sup>36</sup> *Id.*

<sup>37</sup> Complaint para. 26.

and involvement in, HBC. As in the examples set forth in the Ringer and M&M Petitions, the filings Clear Channel made with the FCC on behalf of HBC contradict its claim that it is a passive, non-voting shareholder. Hence, it is plain that the arguments Clear Channel raised in its 2000 defense of the AM/FM merger and which the Commission relied upon to approve that transaction were blatant misrepresentations that now cry out for full inquiry.

Attached hereto as Exhibits 5, 6, 7 and 8 are copies of FCC Form 395B, Broadcast Station Annual Employment Reports, filed on behalf of HBC<sup>38</sup>. These four employment reports cover station clusters in the areas of McAllen, Texas; El Paso, Texas; Los Angeles, California; and Las Vegas, Nevada. On each employment report, the mailing address of the HBC subsidiary is provided as 200 East Basse Road San Antonio, Texas which is Clear Channel's corporate headquarters. "Rick Wolf, VP, Corporate Counsel" certified under penalty of perjury that the information on these forms is true. Rick Wolf is Clear Channel's vice president and corporate counsel. Mr. Wolf apparently believes that as Clear Channel's corporate counsel he has the authority to prepare, execute, and file these forms on behalf of HBC.

Exhibits 9 through 16 attached hereto are copies of FCC Form 395B, Broadcast Station Annual Employment Reports, filed by Clear Channel or one of its subsidiary corporations. These employment reports, divided into regional clusters, set forth the radio stations where Clear Channel has its employees. Each of these reports lists the mailing address of the licensee as 200 East Basse Road, San Antonio, Texas, and is executed by Rick Wolf in his capacity as Clear Channel's vice president and corporate

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<sup>38</sup> They are filed on behalf of HBC subsidiaries Tichenor License Corporation, HBC License Corporation and KLSQ-AM License Corporation.

counsel. Each of these reports also lists one or more stations licensed to HBC.

Specifically, Form 395B requires the licensee to "List call sign and location of all stations whose employees are on this report. This should include commonly owned stations which share one or more employees." The employment reports provide irrefutable evidence that Clear Channel employees are present at a significant number of HBC's stations.

The employment report filed for Clear Channel's San Diego, California, cluster is typical.<sup>39</sup> The report shows that Clear Channel has 259 full-time and 99 part-time employees working at 12 stations in its San Diego station cluster.<sup>40</sup> Two of these stations, KLVN (FM) and KLQV (FM), are licensed to HBC. Clear Channel offers no explanation why an ostensibly passive, non-voting, shareholder should have its employees at HBC stations.

Clear Channel has a strong motive to misrepresent and conceal the control it exercises over the operations and management of HBC. Again, Clear Channel's San Diego cluster is instructive in demonstrating a pattern of conduct. Section 73.3555 of the Commission's Rules provides that the most radio stations a party can own, operate or control is 8, not more than 5 of which are in the same service. Nevertheless, the parties to the transfer have not requested a single waiver of the Commission's rules. Clear Channel's San Diego employment report (Exhibit 9) shows that Clear Channel has its

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<sup>39</sup> Exhibit 9 hereto.

<sup>40</sup> The employment report does not include the two Tijuana, Mexico radio stations serving San Diego that Clear Channel operates.

employees working in nine FM radio stations and three AM stations.<sup>41</sup> If Clear Channel's interest in HBC is attributable, then Clear Channel is in willful violation of the Commission's multiple ownership rules and of US Department of Justice guidelines on revenue concentration in a radio market. Clear Channel is willing to take any steps necessary, including misrepresentation, to avoid such attribution.

Clear Channel's active participation in the affairs of HBC demonstrates a pattern of conduct in which Clear Channel conceals, through numerous material misrepresentations to the FCC, the actual ownership and control of established radio station groups, including HBC. The Ringer and M&M Petitions describe a set of circumstances under which Clear Channel emerges as the real party in interest not only behind the Chillicothe and Waco stations, but also behind several front companies that own multiple radio stations including Concord Media Group, Inc. ("Concord Media"), Youngstown Radio Licensee, LLC ("Youngstown Radio"), and Chase Radio Properties, LLC ("Chase Radio"). Ostensibly, each of these companies operates as an independent radio broadcast entity. In fact, they are all controlled by Clear Channel. As demonstrated in the Ringer and M&M Petitions, Clear Channel controls virtually every aspect of these front companies' operations, including programming, management, engineering, as well as preparing and filing FCC forms and applications. Clear Channel takes all the revenues from these stations and assumes all the risks and benefits for any profits or losses. It is in every way, the *de facto* owner of these licensees.

Clear Channel has engaged in a scheme to conceal from the FCC and the Department of Justice the extent of control it exercises over certain supposedly

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<sup>41</sup> One of these stations is KSDO, a station ostensibly owned by Chase Radio. However as set forth in the M&M Petition, Chase Radio is a Clear Channel front company and nothing more than its alter ego.

independent radio companies. The material in the SBS suit and the attached employment reports demonstrate that Clear Channel willfully and illegally owns, controls, and operates radio stations, in markets where it is barred from openly holding itself out as the owner of these radio stations because of FCC or Department of Justice ownership restrictions. Clear Channel has made a mockery of the Commission's multiple ownership rules. To support its scheme, it has knowingly made numerous material misrepresentations to the Commission and other agencies of the federal government. Clear Channel cannot be trusted to tell the truth, and when a licensee trust is ruptured, privileges may be lost if the breach is substantial. *See, FCC v. WOKO*, 329 US 223 (1946).

If the merger is approved, Clear Channel will hold a 7.6% voting interest in New Univision and will be one of New Univision's largest shareholders. To allow Clear Channel to hold an equity interest in New Univision could be likened to a farmer letting a fox into a henhouse. While the fox might argue that the chickens outnumber it and that the chickens, given the opportunity, could outvote the fox, no prudent farmer would agree to such an arrangement. Likewise, once Clear Channel is permitted to acquire an equity interest in New Univision, the FCC may not be able to stop Clear Channel from having its way with its fellow shareholders.

**C. Entravision is Dependent on Its Relationship with Univision; As Such Univision Has Significant Influence Over Entravision's Business.**

Entravision is the largest Univision television affiliate group for the Univision Network as well as Univision's new Telefutera Network. In addition to its owned and operated stations, Entravision manages four Univision owned stations.<sup>42</sup>

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<sup>42</sup> See Exhibit 3, Entravision 2001 Annual Report, Letter to Shareholders.



Univision's network affiliation agreements give Entravision's television stations the exclusive right to broadcast Univision programming 24 hours per day in their respective markets.<sup>43</sup> Univision is Entravision's national advertiser representative firm, which gives it the exclusive right to sell national advertising on behalf of Entravision. The Univision sales representative works closely with each station's sales manager.<sup>44</sup> In 2001, national advertising accounted for 41% of Entravision's total television advertising revenue.<sup>45</sup> Entravision's stated business plan is to continue acquiring stations in cities currently not served by Univision. In radio, Entravision's plan is to continue acquiring radio stations in markets where Entravision already owns Univision affiliated television stations.<sup>46</sup>

Entravision realizes that its close relationship with Univision carries with it certain business risks, which it discloses in its SEC 10K. Entravision candidly acknowledges, "**Univision has significant influence over our business.**"<sup>47</sup> The SEC 10K also states, "If our relationship with Univision changes in an adverse manner . . . it could have a material adverse effect on our ability to generate television advertising revenue on which our television business depends."<sup>48</sup>

Univision, as the holder of all our Class C common stock, has significant influence over material decisions relating to our business, including the right to elect two of our

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<sup>43</sup> See Exhibit 2, Entravision's SEC Form 10K, p. 7.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> See, Exhibit 3.

<sup>47</sup> Exhibit 2, p. 27 (*Emphasis in the original*).

<sup>48</sup> *Id.*

directors, and the right to approve material decisions involving our company, including any merger, consolidation or other business combination, any dissolution of our company and any transfer of the FCC licenses for any of our Univision-affiliated television stations. Univision's ownership interest may have the effect of delaying, deterring or preventing a change in control of our company and may make some transactions more difficult or impossible to complete without its support.<sup>49</sup>

Other than in a brief footnote, the relationship between Univision and Entravision is not set forth in the applications for transfer of control. The footnote simply states that Univision has a 9.86% voting interest in Entravision and that Univision's interest, prior to consummation of the transaction, will be converted into a non-voting, non-attributable interest.<sup>50</sup> Univision has more than just a 9.86% voting interest; it holds a 32% equity interest in Entravision. In addition to the 14,942,931 Class A voting shares Univision also owns 21,983,392 Class C shares of Entravision.<sup>51</sup> Though it is not set forth in the application, presumably Univision is proposing to convert its Class A voting shares into non-voting shares. Presumably also, Univision will continue to hold its Class C shares. As set forth in Entravision's 10K, it is Univision's ownership of the Class C shares that gives it "significant influence over material decisions relating to our business." While two members of Univision's board of directors recently resigned from the board of Entravision,<sup>52</sup> Univision still maintains the right to appoint directors to Entravision's board. Univision should be required to set forth the exact nature of its proposed post-merger equity interest in Entravision, including all rights it would have under each class

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<sup>49</sup> *Id.*

<sup>50</sup> Applications for Transfer of Control, Exhibit 16, n.1.

<sup>51</sup> See e.g. FCC 316 for KHSH-TV Facility ID 60537, File No. BTCCT-20011024AAH, Exhibit 12.

of stock it would hold. In addition, any outstanding debt involving these parties should be fully enumerated to ensure that the Commission's EDP rule is not violated. Cf. Fox Television Stations, Inc., 11 FCC Rcd 5714 (1995).

Univision and Entravision are partners in every sense of that word. They are mutually depended on each other for their continuing success in the broadcast business. Univision is the dominant partner. It provides the Univision affiliation, programming, marketing and national sales. It has loaned Entravision money in the past and holds a significant equity stake in the company. In return for its equity interest, Univision has asked for and received the right to significantly influence Entravision's business affairs. Entravision's future growth plans depend heavily on its ability to secure additional Univision affiliation agreements. If the merger is approved, can the Commission reasonably expect that this long-standing relationship will suddenly change because one class of stock has been exchanged for another class of stock? Indeed, much the same kind of relationship wrongfully enjoyed by Clear Channel and HBC in the past will result from the proposed relationship between Univision and Entravision.

Can the Commission reasonably expect the Univision/HBC radio stations to compete with Entravision's radio stations after the merger is approved? Entravision, even if its business were not significantly influenced by Univision, would not want to jeopardize its long-standing affiliate relationship by competing with Univision owned radio stations. It certainly would not be in either party's best interest to compete vigorously. On the other hand, if HBC and Entravision cooperate, with the help of their mutual corporate shareholders, they can control an even greater share of the Hispanic

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<sup>52</sup> Entravision Press Release dated August 6, 2001.

radio market, which for local Spanish speakers and for political and commercial advertisers seeking to reach them, is the only meaningful broadcast choice. A less than arms length relationship between these parties could determine the tone of political dialogue in the community to an anti-competitive extent.

**D. New Univision's Corporate Structure is Unreliable.**

Business entities may be structured in a wide variety of ways. Before the FCC there is a long history of broadcast applicants who have proposed legal business structures in an attempt to avoid the rules.<sup>53</sup> Where there is a basis in the record for inferring that non-voting shareholders will exercise influence or control of an ongoing business, the Commission has consistently discredited these types of sham applications.<sup>54</sup> New Univision is structured so that the parties can continue holding significant interest in broadcast properties, yet nominally comply with the Commission's attribution rules.

If the transaction were viewed for what it is, a merger of Clear Channel, Univision, HBC and Entravision, it would be disallowed as anticompetitive and a violation of the Commission's multiple ownership rules. For example in Los Angeles Clear Channel, HBC, Univision and Entravision together own or operate 16 radio stations, 4 AM and 12 FM.<sup>55</sup> In Dallas the parties combined radio assets include 5 AM

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<sup>53</sup> See, e.g. *Signal Ministries, Inc.*, 104 FCC 2d 1481, 1497-97 (Rev Bd. 1986), review denied, 2 FCC Rcd 1259 (1987), aff'd by judgment *sub nom. Adelphi Broadcasting Corp v. FCC*, 838 F. 2d 571 (D.C. Cir. 1988); *KIST Corp.*, 102 FCC 2d 288, 292 (1985) aff'd *per curiam sub nom. United American Telecasters v. FCC*, 801 F. 2d 1436 (D.C. Cir. 1986); *Henderson Broadcasting Co.*, 63 FCC 2d 419, 424-26 (Rev. Bd. 1977).

<sup>54</sup> See, *Victory Media*, 3 FCC Rcd 2073, 2074 (1988).

<sup>55</sup> See Engineering Statement of Herman Hurst of Carl T. Jones Corporation, Exhibit 17 hereto.

and 13 FM stations.<sup>56</sup> Rather than treat the transaction as attributable, Clear Channel takes a 7.6% interest in Univision, which has a single majority shareholder, and Univision converts its attributable voting interest into an ostensibly non-attributable interest and *voila* the transaction complies with the Commission's multiple ownership rules.

The FCC needs to look behind the carefully structured application to the reality of how the parties will conduct their business. What role will Clear Channel play in the New Univision? Its past conduct is certainly indicative of future behavior. Clear Channel is not known for being a passive investor. The *M Street Journal*, a Clear Channel owned publication, states that Clear Channel's 7% interest in New Univision would give Clear Channel "plenty of cross-promotion options."<sup>57</sup> For example, "Clear Channel has plenty of potential tie-ins with its outdoor assets in major Hispanic markets." Clear Channel's current 26% interest "caused the feds to balk at HBC buying KXPK, Denver back in 2000... But a 7% interest might fall off the edge of the DOJ and FCC radar screen." Apparently, Clear Channel is not only counting on the farmer to let the fox into the henhouse, it expects the farmer to go home and fall asleep.

### III. CONCLUSION

The proposed New Univision corporate structure is a sham. While Clear Channel's interest in New Univision will be nominally non-attributable, based on past

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<sup>56</sup> *Id.* Mr Hurst also provides an analysis for Houston (7 AM and 10 FM stations) and Phoenix (4 AM and 13 FM stations).

<sup>57</sup> Exhibit 18, hereto.


practice, there is ample evidence for the Commission to conclude that Clear Channel will exercise a significant and therefore attributable interest in the affairs of New Univision. Likewise, New Univision will continue to have significant influence and control in Entravision, regardless of any change in its corporate voting rights. Accordingly, the Commission should deny the proposed merger.

At a minimum, the Commission should designate the applications for evidentiary hearing. Full document production and depositions will allow the Commission to get at the truth of the matter. At this time the Commission does not have sufficient information on which to base a decision. For example, will Univision continue to hold its Class C shares in Entravision with all their right to control Entravision and elect directors? In what markets will Clear Channel, Univision, HBC and Entravision stations be most concentrated? Certainly, a full multiple ownership study including all stations Clear Channel, Univision, HBC and Entravision operate should be required.<sup>58</sup>

Respectfully submitted,

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<sup>58</sup> Without a hearing, a full multiple ownership study may not be possible. Clear Channel owns and controls numerous radio station licensees through front companies. So far, Clear Channel has refused to produce documentation or provide other pertinent information concerning its continuing relationship with these front companies. Document production and depositions would assist the Commission in determining the exact number of radio stations Clear Channel controls and operates in each market.